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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 FRANK BRAMANTE, et al.,

12 Plaintiffs,

13 v.  
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15 JAMES T. MICELI, et al.,

16 Defendants.  
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CASE NO: 07-CV-0481 W (NLS)

**ORDER (1) GRANTING  
DEFENDANTS' REQUEST FOR  
JUDICIAL NOTICE (2) GRANTING  
MOTION TO UNSEAL COMPLAINT  
AND (3) VACATING APRIL 17, 2007  
ORDER SEALING COMPLAINT  
[DOC. NO. 3]**

18 Plaintiffs Frank Bramante and Salvatore Bramante commenced this lawsuit  
19 under seal against Defendants James T. Miceli, Donna Miceli, the Thomas Road  
20 Company, and Immunosyn Corporation. Plaintiffs now move to unseal the  
21 Complaint. For the reasons stated below, the Court **GRANTS** Plaintiffs' motion.  
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23 **I. BACKGROUND**

24 In August 2001, Plaintiffs filed a lawsuit against Douglas McClain Sr., among  
25 others, in the District of Massachusetts. (Def.'s Opp'n at 2.) In June 2005, Plaintiffs  
26 secured a \$4.5 million default judgment. (*Id.*) Plaintiffs then filed a state-court  
27 action to enforce the judgment. (*Id.*) The case was eventually removed to the  
28 Federal District Court for the District of Massachusetts. (*Id.*)

1 In December 2005, the case was transferred to the Western District of Texas.  
2 (Pl. Mot. at 1.) On June 29, 2006, the Honorable William Justice issued a  
3 protective order providing that “[a]ll Classified Information produced or exchanged  
4 in the course of this litigation shall be used solely for the purpose of preparation and  
5 trial of this litigation and for no other purpose whatsoever . . . .” (Pl.’s Mot., Ex. A.)  
6 The Texas litigation is still pending.

7 In March 2007, Plaintiffs filed this action to recover the \$4.5 million  
8 judgment from Defendants. Plaintiffs also filed a copy of the protective order from  
9 the Texas litigation, along with a request to file the case under seal. In light of the  
10 protective order, on April 17, 2007, this Court issued an order allowing the  
11 Complaint and all documents to be filed under seal. Plaintiffs now seek to unseal  
12 the Complaint. Defendants oppose.

## 13 14 **II. LEGAL STANDARD**

15 Federal law creates a strong presumption in favor of public access to court  
16 records. But this right of access is not absolute. San Jose Mercury New, Inc. v. U.S.  
17 Dist. Court-Norther District (San Jose), 187 F.3d 1096, 1102 (9th Cir. 1999).  
18 “Every Court has supervisory power over its own records and files, and may provide  
19 access to court documents at its discretion.” Hagestad v. Tragesser, 49 F.3d 1430,  
20 1434 (9th Cir. 1995) (citing Nixon v. Warner Communications, Inc., 435 U.S. 589,  
21 598 (1978)). District courts therefore have authority to seal and unseal court  
22 records, a power that derives from their inherent supervisory power. See Hagestad,  
23 49 F.3d at 1434.

24 Whenever a district court is asked to seal court records in a civil case, the  
25 presumption in favor of access can only be overcome by a showing of “sufficiently  
26 important countervailing interests.” San Jose Mercury News, Inc., 187 F.3d at 1102.  
27 Thus, for example, a party from whom discovery is sought must assert good cause for  
28 a protective order. Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1130

1 (9th Cir. 2003); see Fed. R. Civ. Proc. 26(c). “A party asserting good cause bears  
2 the burden, for each particular document it seeks to protect, of showing that specific  
3 prejudice or harm will result if no protective order is granted.” Id. (citing San Jose  
4 Mercury News, Inc., 187 F.3d at 1102); Hagestad, 49 F.3d at 1434 (quoting EEOC  
5 v. Erektion Co., Inc., 900 F.2d 168, 170 (9th Cir. 1990) (Factors relevant to  
6 determining whether this presumption has been overcome include the “public  
7 interest in understanding the judicial process and whether disclosure of the material  
8 could result in improper use of the material for scandalous or libelous purposes or  
9 infringement upon trade secrets.”).

10 The Ninth Circuit has expanded the common law right of access to pretrial  
11 documents produced in civil cases. See San Jose Mercury News, Inc., 187 F.3d at  
12 1102 (holding that the federal common law right of public access extends to  
13 materials submitted in connection with summary-judgment motions). Thus, unless  
14 the court issues a protective order, the fruits of pretrial discovery are presumptively  
15 public. See id. at 1103. But even where a protective order has been issued, the  
16 district court must still exercise rigorous scrutiny before it forecloses public access.  
17 This is particularly true where the protective order was entered pursuant to a  
18 stipulation between the parties. Id. at 1102. The reason is because under such  
19 circumstances, “the party resisting disclosure generally has not made a particularized  
20 showing of good cause. . . .” Id.

### 21 22 **III. DISCUSSION**<sup>1</sup>

23 Defendants argue that the Complaint should not be unsealed because it  
24 includes confidential proprietary and private financial information. The United  
25 States and California Constitutions afford the right to privacy. U.S. Const. amend.  
26 XIV, § 1; Cal. Const. art. I, § 1. This right applies to personal matters and financial  
27 information. See United States v. Comprehensive Drug Testing, Inc., 473 F.3d 915,

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<sup>1</sup>Defendants’ request for judicial notice is granted.

1 970 (9th Cir. 2006) (“[i]ndividuals have a constitutionally protected interest in  
 2 avoiding ‘disclosure of personal matters’ . . . .”); Teamsters Local 856 v. Priceless,  
 3 LLC, 112 Cal. App. 4th 1500, 1512–13 (Cal. App. Ct. 2003). However, this right to  
 4 privacy is not unlimited in scope. Rather, upon the assertion of such constitutional  
 5 rights, there must be a careful balancing of the compelling public need for such  
 6 discovery against the fundamental right of privacy. Bd. of Trs. of Leland Stanford  
 7 Junior Univ. v. Super. Ct., 119 Cal. App. 3d 516, 525 (Cal. App. Ct. 1981).

8 Although Defendants contend that the Complaint includes proprietary and  
 9 private financial information, Defendants have failed to specifically identify such  
 10 information. Instead, Defendants cite numerous paragraphs in the Complaint and  
 11 conclude that those paragraphs include information that should be protected from  
 12 disclosure. Having reviewed the Complaint, the Court disagrees.

13 For example, Defendants argue that the following paragraphs include private  
 14 financial information:

15 21. JAMES T. MICELI and Argyll Equities, LLC received money and assets  
 16 from F.I.T. without providing reasonably equivalent value in exchange to  
 17 F.I.T. and with the intent to hinder and prevent collection by PLAINTIFFS  
 on the Judgment.

18 22. From October 2002 through at least March 2003, JAMES T. MICELI  
 19 used money in FIT’s bank account at West Suburban Bank to pay his credit  
 20 card account at Capital One.

21 (See Oppo. at :13–14.) Despite Defendants’ contention, however, none of the  
 22 information in these paragraphs consists of information that is typically protected  
 23 from disclosure, such as bank account numbers, social security numbers or tax  
 24 information. See Premium Serv. Corp. v. Sperry & Hutchinson Co., 511 F.2d 225,  
 25 229 (9th Cir. 1975). Instead, these paragraphs describe, in general terms, alleged  
 26 financial transactions involving Defendants. Moreover, Defendants have not cited  
 27 authority holding that such information is subject to the right to privacy, nor have  
 28 Defendants persuasively argued that they would be prejudiced or harmed by the

1 disclosure of those transactions or any other information included in the Complaint.  
2 Accordingly, the Court finds that the record does not support Defendants'  
3 contention that the Complaint should remain sealed.

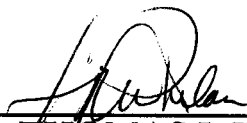
4 Defendants also contend that the motion should be denied because Plaintiffs  
5 failed to comply with the terms of the protective order issued in the Texas litigation.  
6 But that issue is for the Honorable William Justice to decide. The sole issue before  
7 this Court is whether Defendants have established that there are sufficiently  
8 important reasons to overcome the strong presumption in favor of public access to  
9 court records. See San Jose Mercury New, Inc., 187 F.3d at 1102. Having  
10 concluded that no such reasons exist, the Court finds that the Complaint must be  
11 unsealed.

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13 **IV. CONCLUSION AND ORDER**

14 For the reasons discussed above, the Court **GRANTS** Plaintiffs' motion to  
15 unseal the Complaint. This Court's April 17, 2007 order sealing the Complaint and  
16 all documents filed in this case [Doc. No. 3] is, therefore, **VACATED**.

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18 **IT IS SO ORDERED.**

19 **DATE: August 21, 2007**

20   
21 **HON. THOMAS J. WHELAN**  
22 United States District Court  
23 Southern District of California  
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